THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.131 of 2005

Date of Decision: 11 - 9 - 2006

Charanjit Kaur **.....Petitioner**

v.

Smt.Sukhwinder Kaur and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.P.K.Dutt, Advocate
for the petitioner.

Mr.M.L.Saggar, Advocate and
Mr.D.S.Pheruman, Advocate
for the respondents.

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P.S.PATWALIA, J.

The present revision petition challenges order dated 21.12.2004 vide which the learned Presiding Officer, Election Tribunal, Amritsar (hereinafter to be referred as `the Tribunal') has ordered recounting of votes polled on 29.6.2003 for electing a Sarpanch of Village Narli, Tehsil Patti, District Amritsar.

Sukhwinder Kaur, respondent No.1 herein, was defeated in the election for the office of Sarpanch held on 29.6.2003 vide a margin of 239 votes. She filed an election petition challenging the election of petitioner Charanjit Kaur before the Tribunal constituted under the Punjab State Election Commission Act, 1994 and the Rules framed thereunder. It was her case in the petition that the returned candidate in collusion with the Returning Officer did not allow respondent No.1 to enter the polling booth at the time of polling of votes and at the

time of counting of the votes. She further stated that the returned candidate had committed corrupt practices inasmuch as she and her supporters had illegally served liquor in the village to procure votes and to take the voters from their house to the polling booth. The petitioner herein filed a reply to the election petition wherein she denied all the allegations. Thereafter nine issues were framed in the election petition and the first issue was as to whether the election petitioner was entitled to the relief of recounting of votes.

Before the Tribunal both the parties were given opportunity to lead evidence. The election petitioner appeared as her own witness and apart from her, Joginder Singh son of Banta Singh and Ajit Singh son of Maja Singh deposed in her favour. On the other hand, the returned candidate appeared as her own witness and Harchand Singh son of Karam Singh and Vijay Kumar son of Amar Nath deposed in her favour. After the evidence was over, the Tribunal heard the arguments of counsel for both the parties and examined the evidence before it. After examining the same, the Tribunal has ordered recounting of votes after recording the following conclusion:-

> *"7. After hearing the arguments of both the counsel and after going through the evidence which has come on record, I have reached the conclusion that petitioner Sukhwinder Kaur was not present at the time of counting of votes and respondents have admitted that she was not present at the time of counting of votes. As per the witnesses of the petitioner, voters were not allowed to go inside though every voter has a right to cast the vote. Respondent have denied in their deposition that liquor was distributed and transportation was provided but as per the witnesses of the petitioner, they have provided these facilities. As per section 47 and 48 of Punjab State Election Commission Act, 1994, it is mandatory to appoint polling and counting agents but by not allowing any of*

her agent at the time of counting proves collusion of the Polling Staff with the respondent. Therefore Rule 33 of Punjab Panchayat Election Rules of 1994 has been violated as candidate and her agent has been deprived of inspecting the Ballot Papers and in this way in collusion with the respondent, the Polling Staff has unnecessary helped the respondent. Though it is correct that as per result sheet form-9, Exhibit R-1, there is a difference of 239 votes between the petitioner and respondent No.1 but rejection of 109 votes out of 2072 votes also creates suspicion that it would have been done to defeat the petitioner. Respondent's stand is that after the counting husband of the petitioner Sh.Sukhdev Singh has signed the result declaration but Exhibit R-1 do not bear his signatures. This exhibit goes against the respondents. Petitioner has stated that complaint was lodged against the illegalities committing during election but it has not been brought on record. I am in agreement with the argument of the respondent that petitioner has not lodged any complaint against the alleged irregularities and illegalities. As per Punjab State Election Act and Rules such a complaint can only be a pre-emptory act and it do not bring any relief because relief can only be obtained only after filing an Election petition under the provisions of Punjab State Election Commission Act, 1994. Authorities cited by both the counsels, to some extent support their case but because of peculiarity of facts of this case I understand that truth can come out only by recounting. So far as secrecy of vote and a voter is concerned, it can only be breached if Ballot Papers are matched with the master copy of the voter list but there will not be any such necessity and secrecy of the vote shall be maintained. No party shall be put at any disadvantage by recounting of votes but only truth will come out as

to whether polling staff get the votes casted correctly and why so much votes have been rejected and who was polled more votes out of the valid votes."

I have heard Mr.P.K.Dutt, learned counsel for the petitioner herein, who is the returned candidate and Mr.M.L.Saggar and Mr.D.S.Pheruman, learned counsel for the respondent No.1, who is the election petitioner and have also gone through the pleadings before me.

Mr.Dutt has argued that in the facts and circumstances of this case, the Tribunal has erred in ordering recount of the votes. He contends that there was no case made out for ordering recount of votes. He further contends that the observations made by the Tribunal that no one on behalf of the election petitioner was present at the time of declaration of result is also not correct and is belied by the document Annexure P-12 on the paper book of the revision petition which shows the presence of Kirpal Singh representing Sukhwinder Kaur the defeated candidate. He therefore states that the order should be set aside. In support of his contention he relied upon the judgments in **Shri Satyanarain Dudhani v. Uday Kumar Singh and others**, AIR 1993 SC 367; **Preet Mohinder Singh v. Kirpal Singh**, 2001(2) RCR (Civil) 647; **M.Chinnasamy v. K.C.Palanisamy and Ors.**, 2004(1) RCR (Civil) 303; **Gurtej Singh v. Darbara Singh**, 2000(2) RCR (Civil) 525; and **Bharat Singh v. Dalip Singh and others**, 1996(1) RRR 120. On the other hand, learned counsel for the respondent contends that the present order has been made by the Tribunal on a consideration of the contemporaneous evidence before the Tribunal after being prima facie satisfied on the basis of the allegations made before it that recount of votes was justified. Learned counsel submit that the judgments relied upon by the petitioner actually support their case. They submit that the present case falls within the parameters laid down in the aforementioned judgments for ordering recount of votes.

After examining the controversy, I do not find any merit in this

revision petition. I have gone through the statements of the petitioner, the returned candidate, Harchand Singh and Vijay Kumar who had deposed in her favour. The said statements have been placed on the record of this revision petition. It was the case of the defeated candidate that the officials in the polling booth including the Returning Officer were in collusion with the elected candidate. It is therefore that the counting of votes did not commence shortly after the time for casting of votes was over by 5.00 P.M. It is alleged by the defeated candidate that votes were cast even after 5.00 P.M. and it is for this reason that counting started only at 12.30 at night. She contends that the polling staff was in collusion with the returned candidate and was unnecessarily helping her. This statement of fact that the counting started only at 12.00' Clock or 1.00' Clock at night has not been denied even by Charanjit Kaur, the returned candidate. Relevant part of her deposition before the Tribunal is as hereunder:-

> *"....On the Polling day, I went there at about 8.00 P.M. And had casted my vote early in the morning. After casting my vote I used to come to my house in between and then return to the Polling Station. When Polling ended, I was present there. Counting of votes started at 12-1 in the night. Volunteered that Polling Staff was put under Political pressure. We did not complaint about delay in the start of counting. Because counting was started late, so I came to my house entrusting the job of counting to my son. It is correct that I have no knowledge about what happened after I came from there. I was told by my son. Next day my son came to house and told me that I have won by a margin of 250 votes. ...."*

To the same effect is the deposition of Harchand Singh who was a witness of Charanjit Kaur which is as hereunder:-

> *"...Polling ended by 5.00 P.M. Counting of votes started at 11-12 in the night. Volunteered that they have not allowed. Congress Party*

did not allow the counting. Respondent Party did not lodge any oral or written complaint about the counting. After counting of votes result was declared at 11-12 next day in the morning. ....”

Learned counsel for the respondents has relied upon Rule 33 of the Punjab Panchayat Election Rules, 1994 to contend that the counting should start as soon as practicable after poll of votes. There is no reason or justification in the present case as to why there has occurred this delay of 7 to 8 hours to commence the counting. Even apart from this, it has been found by the Tribunal that there is a dispute between the parties as to whether or not there was any representative present at the time of declaration of result. It is further the allegation of the defeated candidate that she herself and her representative were not allowed to enter the booth at the time of polling of votes and counting of votes. Under these circumstances, I do not find any error in the view taken by the Tribunal that real will of the voters must be permitted to prevail by ensuring that the candidate with the largest number of votes is declared elected. The order directing a recount therefore is justified in the facts and circumstances of this case.

In **Shri Satyanarain Dudhani's case (supra)** the view taken by the Hon'ble Supreme Court is as hereunder:-

“10. It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the returning Officer. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting. Ordinarily, it would not be proper to order recount on the basis of bare

allegations in the election petitioner. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered."

This view was reiterated in **Preet Mohinder Singh's case (supra)** where referring to an earlier judgment in the case of **V.S.Achuthanandan v. P.J.Francis and another**, 1999(3) SCC 737 the following observations were made by the Hon'ble Supreme Court:-

"6. In ***V.S.Achuthanandan v. P.J.Francis and another, 1999(3) SCC 737: 2001(1) RCR (Civil) 753 (SC)****, this Court reiterated the settled propositions of law in the matter of inspection and recount of ballot papers. Some of the guidelines and conditions reiterated in that judgment are:*

"(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statement of material facts;

(3) The Court must be prima facie satisfied on the material produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving enquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials."

All other judgments cited are to the same effect. A reading of the aforementioned judgments would show that the view taken is that recount cannot be ordered on the basis of bare allegations. The allegations must be clear and supported by adequate statement of material facts. The Court must also come to the conclusion that it is necessary and imperative to order recount to do full justification to the parties. I am of the opinion that all the aforementioned parameters are satisfied in the present case. Recount has been ordered after evidence has been led by the parties and on a consideration of the same. The Tribunal came to the conclusion that recount was necessary to do complete justice between the parties. I therefore find that the order passed by the Tribunal is within the parameters laid down by the Hon'ble Supreme Court in the aforementioned judgments.

For the reasons aforementioned, I find no merit in this revision petition and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

September 11 , 2006.

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